IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE SEVENTEENTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE BILAL NAZKI

and

THE HON'BLE MR JUSTICE S.ANANDA REDDY

WRIT PETITION NO : 2613 of 2004

Between:

M/s.Ruchi Infrastructure Ltd., New Port Area, Beach Road, Kakinada, represented by its Authorised Signatory-Mr. P.V.S.R.G.Prasad.

..... PETITIONER

AND

1 The Commercial Tax officer, kakinada Circle, Kakinada.
2 The Commissioner of Industries, Govt.of A.P.,Chirag Ali Lanee,Abids, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ of certiorari or any other appropriate writ or order or direction to quash the impugned notice in G.I.No.4344/2003-04 dated 05-02-2004 issued by the 1st respondent.

Counsel for the Petitioner: MR.P.SRINIVASA REDDY

Counsel for the Respondents: SPL GP FOR TAXES

The Court made the following:

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ORDER: (Per the Hon'ble Sri Justice Bilal Nazki)

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Heard learned counsel for the parties. With their consent we are disposing of this writ petition at this stage.

The petitioner is aggrieved of notice dated 05-02-2004 in which, a demand has been raised for a sum of Rs.11,67,559/- under the Central Sales Tax Act, 1956 and the Andhra Pradesh General Sales Tax Act, 1957. He had been asked to make payments within seven days after receipt of notice.

The contention of the learned counsel for petitioner is that he sought exemption for certain sales from paying of sales tax. However, the Commercial Tax Officer did not accept the plea for exemption of goods sold by the petitioner from sales tax as these goods were not specified in the final eligibility certificate of tax holiday issued in favour of the petitioner from the competent authority. The counsel further says that even if his plea of exemption was rejected, even then a demand could not be raised without making assessment. Since no assessment has been made, therefore, the notice dated 05-02-2004

is illegal and without jurisdiction.

We have heard the learned counsel for the parties and gone through the counter-affidavit. The learned Government Pleader was not able to show us any provision in the Act or in the Rules, where a demand could be created without making an assessment. Since admittedly no assessment had been made, therefore, the demand could not have been made and on this ground alone we set aside the notice dated 05-02-2004 and allow the writ petition. However, the respondents are at liberty to proceed in the matter and make the assessment, in accordance with law, for the disputed period.

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(BILAL NAZKI, J)

Date: 17-08-2004

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(S.ANANDA REDDY, J)

GHN/AJR

To

1 The Commercial Tax officer, kakinada Circle, Kakinada.
2 The Commissioner of Industries, Govt.of A.P.,Chirag Ali Lanee,Abids, Hyderabad.

3. Two CCs to the Government Pleader for Taxes, High Court of A.P., Hyderabad.

4. Two CD copies.